

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA :

-v- : INDICTMENT

THOMAS T. PROUSALIS, JR., and : 03 Cr.
ROBERT T. KIRK, JR., :

Defendants. :

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COUNT ONE

(Conspiracy to Commit Securities, Wire and Mail Fraud)

The Grand Jury charges:

RELEVANT PERSONS AND ENTITIES

1. At all times relevant to this Indictment, busybox.com Inc. ("Busybox") was a Delaware corporation which maintained its principal place of business in California, and was in the business of maintaining, distributing and selling photographic and video imagery over the internet. On or about June 30, 2000, common stock and warrants in Busybox ("Busybox Shares") were sold in an initial public offering ("Busybox IPO" or "IPO"), and thereafter traded on the NASDAQ SmallCap Market ("NASDAQ") under the symbols BUSY and BUSYW, respectively.

2. At all times relevant to this Indictment, Barron Chase Securities Inc. ("Barron Chase") was a corporation organized under the laws of the State of Colorado with its principal place of business in the State of Florida. Barron

Chase was a broker/dealer of securities registered with the United States Securities and Exchange Commission (the "SEC") and a member of the National Association of Securities Dealers. One of Barron Chase's primary business activities involved providing investment banking services to corporations. On or about June 26, 2000, Barron Chase entered into a firm commitment underwriting agreement with Busybox, and served as the lead managing underwriter for the Busybox IPO.

3. At all times relevant to this Indictment, ROBERT T. KIRK, JR., the defendant ("Kirk"), was the President, Chief Executive Officer, and majority owner of Barron Chase. By reason of his ownership interest and status as a corporate officer, Kirk exercised effective control over Barron Chase and its management and day-to-day affairs.

4. At all times relevant to this Indictment, THOMAS T. PROUSALIS, JR., the defendant, ("PROUSALIS") was an attorney admitted to practice in, and maintained an office in, the District of Columbia. At all times relevant to this Indictment, PROUSALIS held himself out as a securities law expert who could provide legal advice to small capitalization companies and help raise capital for them. At all times relevant to this Indictment, PROUSALIS served as outside counsel to Busybox and purported to provide legal advice to Busybox, including providing advice in connection with the Busybox IPO.

THE SCHEME TO DEFRAUD

5. From in or about May 2000 to in or about September 2000, THOMAS T. PROUSALIS, JR., and ROBERT T. KIRK, JR., the defendants, and others known and unknown, engaged in a scheme to defraud Busybox and investors who purchased Busybox shares in the IPO and in subsequent aftermarket trading. In furtherance of this scheme, as set forth more fully below, KIRK and PROUSALIS sought to and did make materially false and misleading statements and material omissions, both orally and in writing, in connection with the Busybox IPO. KIRK and PROUSALIS made and caused others to make materially false statements orally and in written materials such as the final Busybox IPO registration statement and prospectus (collectively the "Registration Materials") regarding, among others things: (a) the nature of the underwriting agreement between Barron Chase and Busybox; (b) the use of proceeds from the Busybox IPO; and (c) the fees paid to PROUSALIS in connection with the close of the IPO. As a result of the foregoing misrepresentations, among others, more than 2.5 million Busybox shares were sold in connection with the IPO at \$5 per share. From their participation in the scheme, PROUSALIS earned approximately \$1.2 million, and KIRK's firm, Barron Chase, earned approximately \$1.5 million. In or about April 2001, Busybox was delisted by the NASDAQ, and subsequently filed for bankruptcy.

Busybox's Retention of PROUSALIS and BARRON CHASE

6. Starting in or about mid-1998, officers and directors of Busybox concluded that, in order for Busybox to be a viable company, it needed to raise substantial sums of money from the public. Towards this end, in or about December 1998, Busybox retained THOMAS T. PROUSALIS, JR., the defendant. The retainer agreement between PROUSALIS and Busybox (the "Retainer Agreement") required Busybox to make payments to PROUSALIS in connection with the occurrence of certain events, such as raising funds through the sale of Busybox securities in private placement offerings and through public offerings. Specifically, the Retainer Agreement called for Busybox, upon the close of any IPO, to pay PROUSALIS the greater of \$375,000 or 7½% of the gross proceeds of the offering.

7. In or about April 1999, THOMAS T. PROUSALIS, JR., the defendant, arranged to have Busybox retain the services of Barron Chase to provide a variety of investment banking services. These services included raising money on behalf of Busybox through both private and public offerings of Busybox securities.

8. From in or about April 1999 through April 2000, ROBERT T. KIRK, JR. and THOMAS T. PROUSALIS, JR., the defendants, helped to raise money for Busybox through certain private offerings of Busybox shares. During the same period, PROUSALIS and KIRK undertook steps to sell Busybox shares through a public

offering, including causing a registration statement and prospectus to be filed with the SEC, as well as various amendments thereto.

The Registration Materials

9. In connection with the anticipated Busybox IPO, THOMAS T. PROUSALIS, JR., the defendant, prepared and caused to be filed the Registration Materials, which included several amendments, the last and final version of which was filed on or about May 23, 2000.

10. According to the Registration Materials:

a. Busybox was offering to sell to the public 2,500,000 shares of common stock at \$5.00 per share, and 2,500,000 warrants at \$0.125 per warrant.

b. The total amount to be raised, before deducting expenses incurred in connection with the IPO, such as underwriting and other fees, (the "Gross Proceeds of the Offering") was \$12,812,500.

c. The estimated proceeds that Busybox expected to receive, after deducting the underwriter's fee and other IPO related expenses (the "Net Proceeds of the Offering"), was \$10,559,375.

d. Barron Chase, the underwriter, "agreed to purchase from Busybox an aggregate of 2,500,000 shares and common stock and 2,500,000 warrants" at a price of \$4.55 per share and

\$0.11375 per warrant. Furthermore, Barron Chase was "committed to purchase all of the securities offered by this prospectus."

e. Busybox agreed to sell its shares to Barron Chase in anticipation of the IPO at an underwriter's discount of 9% and to pay Barron Chase a non-accountable expense allowance of 3% of the Gross Proceeds of the Offering.

f. Included among the expenses to be incurred by Busybox in connection with the IPO, and to be paid with the proceeds of the offering, were "Legal Fees and Expenses" totaling \$375,000.

11. As set forth above, the Registration Materials filed on or about May 23, 2000 indicated that Barron Chase agreed to underwrite the Busybox IPO on a "firm commitment" basis. In other words, Barron Chase was obligated to buy all 2,500,000 shares and warrants from Busybox and then sell those shares to the public. Barron Chase was obligated to buy all those shares even if it was unable to immediately sell those shares in connection with the IPO. A "firm commitment" underwriting thus differs from a so-called "best-efforts" underwriting. In a "best efforts" underwriting the underwriter is not obligated to buy all of the issued shares but is instead required to use only its best efforts to sell as many shares as possible. The terms of the underwriting are material to potential investors for a number of reasons, including the fact that in a firm commitment

underwriting, the terms of the underwriting assure that all shares being offered by the issuer will be purchased and therefore the issuer will raise all of the capital set forth in the prospectus to fund its future operations.

**The Secret Agreement Among PROUSALIS and KIRK
Concerning the Underwriting**

12. Sometime shortly after the final version of the Registration Materials were filed, THOMAS T. PROUSALIS, JR., the defendant, learned from ROBERT T. KIRK, JR., the defendant, that Barron Chase was unable to find enough investors to purchase the entire offering through its own brokers, and that Barron Chase itself was unwilling to commit its own capital to purchase the balance of Busybox shares it was unable to sell to the public. KIRK and PROUSALIS knew that Barron Chase was therefore unable and unwilling to satisfy its obligation to underwrite the Busybox IPO on a firm commitment basis.

13. Rather than cancel the IPO or change the underwriting terms and public disclosures concerning the IPO, PROUSALIS and KIRK secretly agreed to hide the fact of Barron Chase's inability to complete the IPO and raise the full amount of proceeds disclosed in the Registration Materials from Busybox's officers and investors who participated in the IPO, and from investors who purchased Busybox shares in the aftermarket.

KIRK and PROUSALIS were motivated to engage in this fraud for a number of reasons.

14. As of in or about June 2000, Barron Chase's financial condition was desperate, due in large part to disastrous proprietary trading conducted by KIRK on behalf of Barron Chase. Indeed, in the months prior to the Busybox IPO Barron Chase had been warned repeatedly by its clearing firm (the "Clearing Firm") that Barron Chase had insufficient capital to operate, and that the Clearing Firm would, if Barron Chase's financial condition did not improve, refuse, among other things, to clear trades on behalf of Barron Chase and its customers. Accordingly, Barron Chase needed the 12% or approximately \$1,537,500 that it stood to reap from the close of the IPO. If the Busybox IPO did not close, Barron Chase's fee would be nothing.

15. As of in or about June 2000, THOMAS T. PROUSALIS, JR., the defendant, also had a strong interest in closing the Busybox IPO. As a result of multiple losing trades in his own personal brokerage account, by late 1998 PROUSALIS's brokerage account went from a positive balance of approximately \$22 million to a debt in excess of \$3 million. PROUSALIS failed to pay this margin, became involved in litigation as a result, and consequently incurred approximately \$800,000 in legal fees. At the same time, PROUSALIS had mortgages on homes that exceeded \$2

million. In addition, in or about November 1999, PROUSALIS had executed a promissory note for approximately \$1,975,000 to purchase a Beechcraft King Air C90B Aircraft. Accordingly, given the magnitude of his financial obligations and the depletion of his savings, PROUSALIS needed the 7½% of the Gross Proceeds of the Offering, or approximately \$960,000, that he stood to reap from the close of the Busybox IPO. If the Busybox IPO did not close, PROUSALIS's fee in connection with the IPO would be nothing.

16. In order to close the Busybox IPO and make up the shortfall of over \$2 million of Busybox shares for which Barron Chase was unable to find interested purchasers, THOMAS T. PROUSALIS, JR., and ROBERT T. KIRK, JR., the defendants, agreed to use the IPO proceeds to pay PROUSALIS's fee, and to purchase IPO shares on behalf of certain Busybox officers and directors.

The Busybox IPO

17. On or about June 26, 2000, ROBERT T. KIRK, JR., the defendant, on behalf of Barron Chase, executed the Underwriting Agreement between Barron Chase and Busybox, in which Barron Chase agreed to underwrite the Busybox IPO on a "firm commitment basis." By that time, however, as KIRK well knew, but failed to disclose to Busybox, Barron Chase was unwilling and unable to fulfill its obligations to conduct a firm commitment underwriting. Likewise, THOMAS T. PROUSALIS, JR., the defendant,

advised Busybox to enter into the Underwriting Agreement and, in violation of his fiduciary duties as Busybox's counsel, failed to disclose to Busybox that PROUSALIS knew Barron Chase could not and would not perform its obligations. Nevertheless, later that day, the Busybox IPO became effective, and Busybox shares were listed on the NASDAQ Smallcap Market and became available for trading on the open market.

18. On or about June 28, 2000, after the Underwriting Agreement was signed and Busybox shares were being publicly traded, THOMAS T. PROUSALIS, JR., the defendant, informed officers and directors of Busybox that despite Barron Chase's agreement to underwrite the Busybox IPO on a firm commitment basis, Barron Chase could not follow through on its commitment; specifically, Barron Chase was unable to sell approximately 600,000 Busybox shares. PROUSALIS indicated that he had an outside investor who could purchase approximately 100,000 Busybox shares for approximately \$500,000. PROUSALIS suggested that, in order to complete the IPO, he would take his fee in Busybox shares - to be funded by IPO proceeds - and the officers and directors should take future bonuses in the form of Busybox shares - also to be funded with IPO proceeds.

19. As THOMAS T. PROUSALIS, JR., the defendant, and ROBERT T. KIRK, JR., the defendant, well knew, this use of more than \$2.5 million of the IPO proceeds was nowhere disclosed in

the Registration Materials. When questioned about the legality of this arrangement by Busybox officers, PROUSALIS assured them - although he knew the contrary to be true - that this arrangement was entirely lawful. Indeed, PROUSALIS informed the Busybox officers that he had spoken with an SEC examiner to confirm that this arrangement was proper and that no additional disclosures needed to be made. In truth and in fact, PROUSALIS had not informed anyone at the SEC the full details of his and KIRK's plan. PROUSALIS and KIRK well knew that, had they done so, the SEC would not have permitted the Busybox IPO to go forward.

The Secret Loans to PROUSALIS and Others and The Distribution of the IPO Proceeds

20. In order to effectuate the arrangement set forth above, THOMAS T. PROUSALIS, JR., the defendant, and certain Busybox officers opened personal brokerage accounts at Barron Chase (the "Barron Chase Accounts"). The Barron Chase Accounts were not margin accounts, and all opened with zero balances. ROBERT T. KIRK, JR., the defendant, opened the Barron Chase Accounts on behalf of PROUSALIS and the others, and was listed on the accounts as the "Investment Consultant." Because - consistent with the notion of a "firm commitment" underwriting - KIRK knew that the Clearing Firm would not release the IPO proceeds for distribution until all of the IPO proceeds were collected, KIRK directed Barron Chase to make secret loans to

PROUSALIS and the officers to enable them to purchase their Busybox IPO allotments.

21. On or about June 30, 2000, all of the Barron Chase Accounts reflected large purchases of Busybox IPO shares. However, because the Barron Chase Accounts had no previous balances and were not margin accounts, they simultaneously reflected large negative balances equal to the price of Busybox shares purchased. For example, on or about June 30, 2000, the Barron Chase account of THOMAS T. PROUSALIS reflected a purchase of 245,000 Busybox shares and 245,000 warrants, for a total price of \$1,255,625.00. However, PROUSALIS had no cash to fund this purchase, and thus the account reflected a negative balance of \$1,255,625.00. The Barron Chase Accounts of the officers who received IPO shares pursuant to PROUSALIS and KIRK's plan reflected similar activity that day.

22. At the same time, on or about June 30, 2000, the Busybox IPO purportedly closed. PROUSALIS and KIRK falsely and fraudulently represented to the Clearing Firm that the all of the funds to sell the entire offering had been raised and thus the IPO proceeds could be distributed. As KIRK and PROUSALIS well knew, this representation was false because approximately \$2.5 million of the supposed proceeds raised came from short-term loans made by Barron Chase to fund the purchase of shares on behalf of PROUSALIS and others. In accordance with KIRK's and

PROUSALIS's instructions, on or about July 3, 2000, the Clearing Firm distributed the Busybox IPO proceeds. Approximately \$2.5 million of the proceeds went to accounts in the name of PROUSALIS and various Busybox officers, which were then used to pay the loans extended by Barron Chase to fund the purchase of the Busybox IPO shares. PROUSALIS himself received approximately \$1,255,625.00.

23. For its work in connection with the IPO, Barron Chase, KIRK's firm, received its 9% underwriter's discount and 3% expense allowance, for total compensation of approximately \$1,537,500.

24. At no time did any of the officers of Busybox who received IPO shares sell them. On the other hand, THOMAS T. PROUSALIS, JR., the defendant, sold his shares in or about September 2000 for approximately \$750,000. Busybox was delisted by the NASDAQ in or about April 2001 and filed for bankruptcy protection sometime thereafter.

**The Materially False and Misleading Statements
in the Registration Materials**

25. As THOMAS T. PROUSALIS, JR., and ROBERT T. KIRK, JR., the defendants, well knew, the Registration Materials contained materially false and misleading statements about, among other things:

a. PROUSALIS's fee, which, according to the Registration Materials filed with the SEC, was \$375,000. In

truth and in fact, as PROUSALIS well knew, his fee in connection with the IPO was the greater of \$375,000 or 7½% of the gross proceeds of the offering. Because the offering was for 2.5 million shares and 2.5 million warrants at \$5 and \$0.125 respectively, Busybox was supposed to pay PROUSALIS approximately \$960,000. In fact, PROUSALIS received a fee of approximately \$1,255,625 -- approximately \$880,000 more than was disclosed in the Registration Materials.

b. the nature of the underwriting agreement, which, according to the Registration Materials, was being done on a firm commitment basis by Barron Chase. As PROUSALIS and KIRK well knew, Barron Chase was unable to, and did not in fact, conduct the underwriting on a firm commitment basis;

c. the use of the IPO proceeds, about which the Registration Materials omitted entirely any mention that PROUSALIS and officers of Busybox were receiving funds to purchase IPO shares. As PROUSALIS and KIRK well knew, the Registration Materials nowhere indicated that the IPO proceeds were going to be used to purchase hundreds of thousands of shares on behalf of Busybox officers, and to purchase approximately 245,000 shares and warrants on behalf of PROUSALIS. PROUSALIS and KIRK well knew that as a result of Barron Chase's inability to fulfill its firm commitment, and their decision to use IPO proceeds to pay off the secret loans extended by Barron Chase to

purchase shares for PROUSALIS and others, the Net Proceeds of the Offering to Busybox would be almost \$2 million less than the \$10.5 million disclosed in the Registration Materials.

The Sale of Busybox Shares to the Public

26. As set forth above, THOMAS T. PROUSALIS, JR., and ROBERT T. KIRK, JR., the defendants, knew full well that the Registration Materials contained materially false and misleading statements. KIRK nevertheless caused brokers at Barron Chase to offer and sell Busybox IPO securities knowing that investors - including one or more located in the Southern District of New York - would receive copies of the Registration Materials containing the misrepresentations set forth above. PROUSALIS, likewise, as an experienced securities law practitioner, knew that potential investors - including one or more located in the Southern District of New York - would receive copies of the Registration Materials containing the misrepresentations set forth above. Furthermore, as both KIRK and PROUSALIS well knew and intended, victim investors who purchased Busybox securities in aftermarket trading would and did rely upon false statements in the Registration Materials.

THE CONSPIRACY

27. From in or about May 2000 until in or about September 2000, in the Southern District of New York and elsewhere, THOMAS T. PROUSALIS, JR., and ROBERT T. KIRK, JR., the

defendants, together with others known and unknown, unlawfully, willfully, and knowingly did combine, conspire, confederate, and agree together and with each other to commit offenses against the United States, to wit, (a) to commit securities fraud, in violation of Sections 78j(b) and 78ff of Title 15, United States Code, and Title 17, Code of Federal Regulations, Section 240.10b-5; (b) wire fraud, in violation of Title 18, United States Code, Sections 1343 and 1346; and (c) mail fraud, in violation of Title 18, United States Code, Sections 1341 and 1346.

OBJECTS OF THE CONSPIRACY

Securities Fraud

28. It was a part and an object of the conspiracy that THOMAS T. PROUSALIS, JR., and ROBERT T. KIRK, JR., the defendants, and others known and unknown, unlawfully, willfully, and knowingly, by the use of the means and instrumentalities of interstate commerce, the mails, and the facilities of national securities exchanges, directly and indirectly, would and did use and employ manipulative and deceptive devices and contrivances in violation of Title 17, Code of Federal Regulations, Section 240.10b-5, by (a) employing devices, schemes, and artifices to defraud; (b) making untrue statements of material facts and omitting to state material facts necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading; and (c) engaging in acts,

practices, and courses of business which operated and would operate as a fraud and deceit upon a person, in connection with the purchase and sale of securities, in violation of Title 15, United States Code, Sections 78j(b) and 78ff.

Wire Fraud

29. It was further a part and an object of the conspiracy that THOMAS T. PROUSALIS, JR., and ROBERT T. KIRK, JR., the defendants, and others known and unknown, unlawfully, willfully, and knowingly, having devised and intending to devise a scheme and artifice to defraud, and for obtaining money and property by means of false and fraudulent pretenses, representations, and promises, would and did transmit and cause to be transmitted by means of wire communication in interstate and foreign commerce, writings, signs, signals, pictures, and sounds for the purpose of executing such scheme and artifice, in violation of Title 18, United States Code, Sections 1343 and 1346.

Mail Fraud

30. It was further a part and an object of the conspiracy that THOMAS T. PROUSALIS, JR., and ROBERT T. KIRK, JR., the defendants, and others known and unknown, unlawfully, willfully, knowingly, having devised and intending to devise a scheme and artifice to defraud, and for obtaining money and property by means of false and fraudulent pretenses, representations, and promises, for the purpose of executing such

scheme and artifice and attempting to do so, would and did place in a post office and authorized depository for mail matter, matters and things to be sent and delivered by the Postal Service, and deposited and caused to be deposited matters and things to be sent and delivered by private and commercial interstate carriers, and would and did take and receive therefrom such matters and things and knowingly caused to be delivered by mail and such carriers according to direction thereon, such matters and things, all in violation of Title 18, United States Code, Sections 1341 and 1346.

MEANS AND METHODS OF THE CONSPIRACY

31. Among the means and methods by which THOMAS T. PROUSALIS, JR., and ROBERT T. KIRK, JR., the defendants, together with others known and unknown, would and did carry out the conspiracy were the following:

a. PROUSALIS prepared and caused to be filed the Registration Materials with the SEC knowing that they contained materially false and misleading statements.

b. KIRK and PROUSALIS caused accounts at Barron Chase to be opened on behalf of PROUSALIS and certain Busybox officers and directors.

c. KIRK caused Barron Chase to make secret loans to the Barron Chase Accounts of PROUSALIS and certain Busybox officers and directors in connection with their purchase of Busybox IPO shares.

d. KIRK and PROUSALIS agreed to have proceeds of the Busybox IPO deposited into accounts in the name of PROUSALIS and various Busybox officers and directors.

e. KIRK executed the Underwriting Agreement - knowing that Barron Chase was unable to fulfill its terms - which KIRK knew was going to be attached to the Registration Materials and without which the SEC would not have permitted the Busybox IPO to become effective.

f. KIRK authorized the distribution of the IPO proceeds, including the distribution of approximately \$2.3 million to accounts in the name of PROUSALIS and various officers and directors of Busybox to fund the purchase of IPO shares, knowing that that use of the IPO proceeds was not disclosed in the Registration Materials.

g. In order to further conceal the secret arrangement and his failure to disclose fully his fee in the Registration Materials, PROUSALIS failed to file forms with the SEC - as he was required to do as an acquirer or seller of more than 10% of the outstanding shares of Busybox - when he acquired and sold his Busybox IPO shares.

h. PROUSALIS issued an "opinion letter" - which was a condition precedent to the close of the IPO - in which he stated in sum and substance that the Registration Materials

contained no materially false statements or material omissions when he knew the contrary to be true.

i. PROUSALIS falsely represented to Busybox officers and directors that he had disclosed to the SEC the arrangement to use IPO proceeds to purchase shares for PROUSALIS and certain officers and that, based on the direction he received from the SEC, this arrangement did not need to be disclosed in the Registration Materials.

OVERT ACTS

32. In furtherance of said conspiracy and to effect the illegal objects thereof, the following overt acts, among others, were committed in the Southern District of New York and elsewhere:

a. On or about April 18, 2000, counsel to Barron Chase sent a copy of the Registration Materials via Federal Express from Florida to the Depository Trust Company in New York, New York.

b. On or about April 18, 2000, THOMAS T. PROUSALIS, JR., the defendant, sent a copy of the Registration Materials via Federal Express from Washington, D.C. to Standard & Poor's in New York, New York.

c. On or about May 23, 2000, PROUSALIS caused the Registration Materials to be electronically filed with the SEC.

d. On or about June 26, 2000, ROBERT T. KIRK, JR., the defendant, executed the Underwriting Agreement.

e. On or about June 27, 2000, Barron Chase sent a fax from Florida to New York, New York regarding distribution Indictment for Busybox securities.

f. On or about June 27, 2000, public trading in Busybox securities began.

g. On or about June 28, 2000, while in Washington, D.C., PROUSALIS spoke on the phone with an officer of Busybox in California.

h. On or about July 28, 2000, a Barron Chase Account statement reflecting the transfer of IPO proceeds into the account of one of the Busybox officers was sent in the mail from Colorado to New York, New York.

i. On or about June 30, 2000, an investor located in Westchester County, New York, purchased Busybox securities from Barron Chase.

j. On or about June 30, 2000, a fax was sent from Barron Chase to Barron Chase's clearing firm authorizing the release of the IPO proceeds to Busybox.

k. On or about July 3, 2000, the IPO proceeds were distributed by Barron Chase to Busybox.

1. In or about September 2000, PROUSALIS the defendant, sold Busybox securities worth approximately \$750,000.

(Title 18, United States Code, Section 371).

COUNT TWO

(Securities Fraud)

The Grand Jury further charges:

33. The allegations contained in paragraphs 1 through 26, and 31 and 32 of this Indictment are realleged and incorporated as if fully set forth herein.

34. From in or about May 2000 to in or about September 2000, in the Southern District of New York and elsewhere, THOMAS T. PROUSALIS, JR., and ROBERT T. KIRK, JR., the defendants, unlawfully, willfully and knowingly, directly and indirectly, by use of the means and instrumentalities of interstate commerce, the mails, and the facilities of national securities exchanges did use and employ manipulative and deceptive devices and contrivances in violation of Title 17, Code of Federal Regulations, Section 240.10b-5, by: (a) employing devices, schemes, and artifices to defraud; (b) making untrue statements of material facts and omitting to state material facts

necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading; and (c) engaging in acts, practices, and courses of business which operated and would operate as a fraud upon purchasers and sellers of Busybox common stock.

(Title 15, United States Code, Sections 78j(b) and 78ff; Title 17, Code of Federal Regulations, Section 240.10b-5; and Title 18, United States Code, Section 2).

Foreperson

DAVID N. KELLEY
UNITED STATES ATTORNEY